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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 11, 2003

W. Kenneth Ferree, Esquire
Chief, Media Bureau
Federal Communications Commission
445 12th Street, N.W.
Room 3-C740
Washington, D.C. 20554

Re: Applications for Transfer of Control of Hispanic
Broadcasting Corp., and Certain Subsidiaries, Licensees
of KGBT(AM), Harlingen, Texas *et al.* (Docket No. MB
02-235, FCC File Nos. BTC-20020723ABL *et al.*)

Dear Ms. Dortch:

The National Hispanic Policy Institute, Inc. ("NHPI") hereby replies to the June 25, 2003 letter filed by Univision Communications, Inc. ("Univision"). In its letter Univision again restates its contention that, if the proposed merger with Hispanic Broadcasting Corporation ("HBC") is granted, Univision's interest in Entravision Communications Corporation ("Entravision") will be non-attributable.

In arguing for a "bright-line" attribution test, Univision claims that it demonstrated in a December 9, 2002 letter to the Media Bureau that its interest in Entravision is below the 33% threshold equity/debt plus ("EDP") ratio. In fact, Univision failed to make any such showing.

Univision's December 9, 2002 letter was filed in response to a November 29, 2002 Commission request for further information. The Commission was responding to a NHPI showing, that Entravision had outstanding debts owed to Univision. Univision had previously represented to the Commission that "Univision has no debt interest in

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Entravision.”¹ The Commission ordered Univision to “explain the origin and nature of such accounts.” It further ordered Univision to, “[p]rovide an audited financial statement to support any factual assertion, and a detailed showing demonstrating compliance with the Equity/Debt Plus Rule.”²

In response to the Commission’s letter, Univision submitted certain documentation, which it claimed showed that it was in compliance with the Commission’s EDP rule. However, the evidence Univision provided was incomplete and not audited.³ As NHPI stated in its December 16, 2002 letter:

Univision has again misled the Commission and has failed to be forthcoming and candid in its representations to the Commission. . . . Entravision’s DEF 14A shows that Andrew Hobson, Executive Vice President of Univision, holds 211,136 Class A shares of Entravision. The DEF 14A also shows that Michael D. Wortsman, Co-President of Univision Television Group, Inc., holds 56,136 Class A shares of Entravision.

Entravision’s DEF 14A reports stock ownership of (1) persons or entities known to be the beneficial owners of more than 5% of the outstanding shares of stock, (2) each of its directors, and (3) certain key executives of the company. Mr. Hobson and Mr. Wortsman’s share holdings were reported because, at the time, they were members of Entravision’s board of directors. Entravision’s DEF 14A does not require it to report shares held by Univision insiders unless their individual holdings exceed 5% of the outstanding shares. Thus, in addition to Mr. Hobson and Mr. Wortsman, it is quite possible that other Univision officers and directors hold Entravision shares. There may also be other Entravision debts owed to Univision that are not reported in SEC filings. Had an independent audit been conducted, an honest and complete answer could have been provided.

For the Commission to make a bright-line determination concerning compliance with the EDP rule, it must know the percentage of equity and debt a party holds. In this

¹ Univision Opposition to Petition to Deny, at p. 11.

² FCC letter dated November 29, 2002.

³ Univision letter dated December 9, 2003.

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case, the Commission knows that Entravision has outstanding debts owed to Univision. What the Commission does not know, is the amount and percentage of Entravision's debt owed to Univision. Also unknown, is how many shares of Entravision's stock are held by Univision's officers and directors. See, Section 73.3555, note 2. Here again Univision has refused to provide this information. Without knowing the extent of equity, and the extent of debt Univision, its officers and directors hold in Entravision, the FCC cannot determine whether Univision complies with the EDP rule.

Univision's failure to produce information, which is easily obtained and uniquely within its control, permits the Commission to draw the negative conclusion that if the information were produced it would show that Univision, post-merger, will still have an attributable interest in Entravision. *Tendler v. Jaffe*, 203 F.2d 14, 19 (D.C. Cir. 1953) ("The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control, raises the presumption that if produced the evidence would be unfavorable to his cause."); *International Union, UAW v. National Labor Relations Board*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) ("the failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the . . . document, if brought, would have exposed facts unfavorable to the party.") (quoting J. Wigmore, *Evidence* §284, 3rd ed. 1940); *United States v. Robinson*, 233 F.2d 517, 519 (D.C. Cir. 1956) ("[u]nquestionably the failure of a defendant in a civil case to testify or offer other evidence within his ability to produce and which would explain or rebut a case made by the other side, may, in a proper case, be considered a circumstance against him and may raise presumption that the evidence would not be favorable to his position"); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 3948, 3952-53 (Rev. Bd. 1988); *Thornell Barnes v. Illinois Bell Telephone Co.*, 1 FCC 2d 1247, 1274 (Rev. Bd. 1965). Univision's failure to produce evidence permits the Commission to conclude that Univision's interest in Entravision is attributable as a matter of law.

Univision does not meet the FCC's bright-line EDP test. Even if Univision could demonstrate that its interest in Entravision is below the 33% debt/equity threshold, its relationship with Entravision is such that it would still be able to continue to exert significant influence over key licensee decisions. As the Commission has said:

In adopting the EDP rule, we affirm our tentative conclusion. . . that there is the potential for certain substantial investors or creditors to exert significant influence over key licensee decisions, even though they do not hold a direct voting interest. . . which may undermine the diversity of voices we seek to promote. They may, through their contractual rights and their ongoing right to

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communicate freely with the licensee, exert as much, if not more, influence or control over some corporate decisions as voting equity holders whose interests are attributable.⁴

Univision's relationship with Entravision is significantly different from previous relationships that the FCC has found to be non-attributable. For this reason, the cases Univision cites in support of its claim that its interest in Entravision, will be non-attributable are inapposite.

Univision debt and equity interests in Entravision have historically been attributable interests. Univision has a long relationship with Entravision as a business partner, program supplier, creditor and financial backer. In return for Univision's support, Entravision has granted Univision significant rights, including the right to appoint two directors to its board and the right to influence its core operations. As Entravision's SEC 10K acknowledges, **"Univision has significant influence over our business."** Univision proposes to convert its voting shares into non-voting shares and to give up its right to appoint directors to Entravision's board. This, however, will not change the fundamental well-established relationship between Univision and Entravision.

In none of the cases Univision cites, did the Commission permitted an applicant to convert a long-standing attributable relationship with another party into a non-attributable interest. For example, General Electric's purchase of Telemundo fully complied with the multiple ownership rules without the need to convert previously held attributable interests into non-voting, non-attributable interests.⁵ If, for example, General Electric's proposed purchase of Telemundo did not comply with the FCC's multiple ownership rules and General Electric proposed to convert its attributable interest in NBC into a non-voting interest, and further, if the FCC had permitted such a transaction, then Univision would have a case on point.

Univision's letter has little to say about its plan to retain the exclusive right to make national sales on behalf Entravision. Section 73.658(i) prohibits a television network from representing individual stations, affiliated with the network, for the sale of non-network time. In the 1970s, Univision's predecessor entity argued that, as a fledgling network, a waiver of this rule was required to enhance the development of Spanish language television.⁶ Univision's letter merely states that Telemundo was given the "exact same waiver." Here again the situation is quite different. In *Telemundo II*, there was no issue concerning Telemundo's inappropriate exercise of control over its

⁴ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, 14 FCC Red 12559, 12582-3 (1999) ("Attribution Order").

⁵ *Telemundo Communications Group, Inc.*, 17 FCC Red 6958 (2002). (*Telemundo II*).

⁶ *Amendment of §73.658(i) of the Commission's Rules*, 5 FCC Red 7280 (1990).

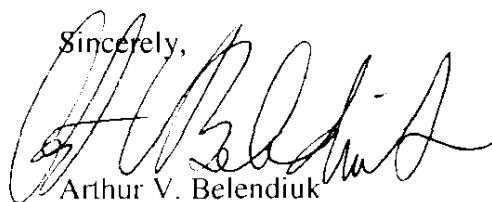
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affiliates. In this case, the central question is, will Univision's exclusive right to make national sales on behalf of Entravision give Univision the right to influence Entravision's core operations, especially its radio station holdings?

Univision's letter cites, with approval, the Commission's statement, "[t]he mass media attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."⁷ The FCC, while granting a waiver of the national spot sales rule to Univision and Telemundo, maintained the rule for other, non-Spanish language television networks. The FCC reasoned that without the rule networks would be able to exert undue influence over affiliate programming decisions. The right to sell national spot advertising gives Univision significant rights to influence Entravision, including, as the Commission has stated, the power to influence programming decisions. At a minimum, the FCC should forbid Univision from making national spot sales on behalf of Entravision, if the proposed merger is approved.

Converting Univision's voting shares in Entravision into non-voting shares will not fundamentally change the existing relationship. Entravision has been and will continue to be dependent on Univision for its continued survival. Univision, through its control of national sales and its absolute right to grant or deny new network affiliations, will be able to control financial decisions, programming and personnel at Entravision owned radio stations, thus ensuring that Entravision's radio stations will not compete with HBC's radio stations. Such influence will diminish diversity and stifle competition, two key aspects of the FCC local ownership rules.

Sincerely,



Arthur V. Belendiuk

Counsel to National Hispanic Policy
Institute, Inc.

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin

⁷ Univision, June 25, 2003 letter citing the *Attribution Order* at p. 12560, (emphasis added).

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